

LAWRENCE O'TOOLE 4/17/2019

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1

IN THE UNITED STATES DISTRICT COURT

2

EASTERN DISTRICT OF MISSOURI

EASTERN DIVISION

3

4

MALEEHA AHMAD, et al.,)

)

5

Plaintiffs,)

)

6

v.)

Case No. 4:17-cv-2455-CDP

)

7

CITY OF ST. LOUIS, MISSOURI,)

)

8

Defendant.)

9

10

DEPOSITION OF LAWRENCE O'TOOLE

11

TAKEN ON BEHALF OF THE PLAINTIFF

12

APRIL 17, 2019

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Pls.' Ex. 25

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1 IN THE UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF MISSOURI
3 EASTERN DIVISION
4 MALEEHA AHMAD, et al.,)
5 Plaintiffs,)
6 v.) Case No. 4:17-cv-2455-CDP
7 CITY OF ST. LOUIS, MISSOURI,)
8 Defendant.)

9
10 DEPOSITION OF WITNESS, LAWRENCE
11 O'TOOLE, produced, sworn, and examined on April 17,
12 2019, between the hours of 10:00 a.m. and 12:00 p.m.
13 of that day at Saint Louis City Hall, 1200 Market
14 Street, Room 314, Saint Louis, Missouri, before
15 Susan J. Pybas, CCR No. 1446(T), within the state of
16 Missouri, in a certain cause now pending before the
17 United States District Court, Eastern District of
18 Missouri, Eastern Division, wherein Maleeha Ahmad,
19 et al. are the Plaintiffs; City of Saint Louis,
20 Missouri is the Defendant.

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1 IT IS HEREBY STIPULATED AND
2 AGREED by and between counsel for the Plaintiffs and
3 counsel for the Defendant that this deposition may
4 be taken by Susan J. Pybas, CCR, No. 1446(T), a
5 Certified Court Reporter, thereafter transcribed
6 into typewriting, with the signature of the witness
7 being expressly requested.

8 LAWRENCE O'TOOLE,
9 of lawful age, having been produced, sworn, and
10 examined on the part of the Plaintiffs,
11 testified as follows:

12 * * * * *

13 (Starting time of the deposition: 10:09 a.m.)

14 * * * * *

15 EXAMINATION

16 BY MR. PRAISS:

17 Q. Good morning, Colonel O'Toole.

18 A. Good morning.

19 Q. My name is Omri Praiss. I just introduced
20 myself before the deposition. I'm one of the
21 attorneys for the plaintiffs in the case of Ahmad
22 vs. the City of Saint Louis.

23 Are you familiar with that case?

24 A. You know, just that you filed a lawsuit,
25 you know.

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1 Q. Okay. Have you ever been deposed?

2 A. I have.

3 Q. You have. Okay. How many times?

4 A. Through my career, a number of times.

5 Q. A number of times.

6 Just very briefly, I'm going to ask the
7 questions today. It's very important that you give
8 me a chance to complete my questions. Please
9 refrain from interrupting me, and, also, I'll do the
10 same, not interrupt you, when you're answering.
11 Otherwise, it's very hard for the court reporter.

12 Is that acceptable?

13 A. Yes.

14 Q. Okay. And try and always respond orally,
15 not with "uh-huh" so that there's something on the
16 record.

17 A. Yes.

18 Q. Thank you.

19 Are you under any medication that in any
20 way impairs your ability to provide complete and
21 truthful answers today?

22 A. No. I'm taking Flonase.

23 Q. Okay. You understand you're under oath
24 and subject to penalty of perjury?

25 A. I do.

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1 Q. Wonderful.

2 For the record, could you state your name?

3 A. Lawrence O'Toole.

4 Q. Okay. Other than speaking with your
5 attorneys, did you do anything to prepare for
6 today's deposition?

7 A. No.

8 Q. Okay. What is your current rank?

9 A. A lieutenant colonel.

10 Q. Okay. And how long have you had that
11 rank?

12 A. I was promoted to lieutenant colonel in
13 2013, and I was promoted to assistant chief in 2015.

14 Q. Who do you currently report to?

15 A. Commissioner John Hayden.

16 Q. Okay. What was your rank in
17 September/October of 2017?

18 A. I was the interim commissioner.

19 Q. And what does that mean, to be the
20 "interim commissioner"?

21 A. Chief Sam Dotson left in April. I was
22 the -- I was the assistant chief then, and I was
23 named by the mayor as the interim chief to handle
24 all the affairs of the police department.

25 Q. Okay. So you were -- as interim

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1 commissioner -- first of all, you used the term
2 "interim commissioner" and "interim chief." Are
3 they synonymous?

4 A. Yes.

5 Q. Okay. As the interim chief, you were the
6 highest police officer --

7 A. Correct.

8 Q. For St. Louis Metropolitan Police
9 Department; is that correct?

10 A. Correct.

11 Q. How long did you serve as -- in the
12 position of interim chief?

13 A. April of 2017 to December of 20 -- of
14 2017.

15 Q. Okay. You were the, so to speak, the
16 interim chief of police during the entire time of
17 the Stockley protest?

18 A. That's correct.

19 Q. Gotcha. Okay.

20 And at that time, did you report to
21 anyone --

22 A. I --

23 Q. -- as interim chief?

24 A. -- I would report to the public safety
25 director.

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1 Q. And who was that?

2 A. At that time, it was the acting public
3 director, Charlene Deeken.

4 Q. Okay. How long have you been employed at
5 the St. Louis Metropolitan Police Department?

6 A. I've been employed since January of 1984.

7 Q. Okay. In the fall of 2017, during the
8 time period of the Stockley protest, you were
9 named -- you were described as "Cruiser 1." Is that
10 correct?

11 A. Yeah, that would be correct.

12 Q. Okay. What does that mean?

13 A. Those -- when you get on the -- on the
14 police radio to -- you're given call -- referred to
15 as "call signs," and my call sign is -- the -- the
16 commissioner's call sign is Cruiser 1. The
17 assistant chief is Cruiser 2 and so forth, and then
18 the -- the numbers would get bigger as you go.

19 Q. Gotcha. Thank you.

20 Colonel O'Toole, do you have in front of
21 you what's been marked as Deposition Exhibit 1?

22 (WHEREIN, Exhibit 1 was marked for
23 identification by the court reporter.)

24 A. I do.

25 Q. Okay. Could you identify this document

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1 **for the record?**

2 A. (Reviewed document.) This is the document
3 produced by our operational planning unit, and it's
4 dated September 27th of 2017 and the subject is
5 "Civil Disobedience Response Operations Plan."

6 **Q. Now, we know that the Stockley verdict**
7 **came down on September 15th, correct?**

8 A. Correct.

9 **Q. Was this prepared before or after the**
10 **Stockley verdict was -- came down?**

11 A. It would have been -- I -- I would've
12 thought that -- I don't know the exact dates, but
13 all the planning and -- that we had prior to the
14 Stockley.

15 **Q. Is the date that's on here -- it shows**
16 **September 27th, 2017.**

17 A. Uh-huh.

18 **Q. That's inaccurate; is that correct?**

19 A. That's correct, yes.

20 **Q. Okay. And the correct -- what's the right**
21 **date that should be on there?**

22 MR. DIERKER: Is it all right if I
23 hand him that?

24 A. The one that I've been handed is September
25 14th.

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1 BY MR. PRAISS:

2 Q. Okay.

3 MR. PRAISS: Why don't we mark that
4 as Exhibit 2, please.

5 (WHEREIN, Exhibit 2 was marked for
6 identification by the court reporter.)

7 by MR. PRAISS

8 Q. So you've been handed now Exhibit 2.

9 Am I correct that's just the first page of
10 the operations plan?

11 A. (Reviewed document.) Correct.

12 Q. Okay. And what's the date that shows on
13 that one?

14 A. September 14th, 2017.

15 Q. Okay. So am I correct that the opinions
16 -- operations plan was issued literally one day
17 before the verdict came down?

18 A. Correct.

19 Q. Okay. Do you know who was responsible for
20 preparing this document?

21 A. I believe -- I'll look here to see if
22 there's a name on the back of it.

23 Q. Why don't I make it easy for you. If you
24 go to Bates No. City 461.

25 A. Yes.

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1 Q. Do you see your signature at the very
2 bottom of this --

3 A. I do. Yes, I do.

4 Q. And it's fair to say that you had an
5 opportunity to review this operations plan before
6 you signed off and approved it?

7 A. Correct.

8 Q. Okay. I assume the City doesn't prepare
9 this from scratch but there's actually a form that
10 is used on occasion and just updated for the
11 specific major event that they're concerned about.

12 A. Correct. We have major events throughout
13 the city, throughout the year.

14 Q. Okay.

15 A. And our operational planning unit, their
16 -- their -- that's their responsibility is -- is to
17 plan these details because of all the manpower that
18 takes place, and -- and it's pretty much just a
19 format, yes, sir.

20 Q. All right. So is it fair to say that that
21 -- to a large extent, the format is identical from
22 one major event to another in terms of the
23 operations plan document with the exception of maybe
24 some of the information about which groups of
25 officers will be at which location?

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1 A. They're -- they're pretty similar, yes.

2 Q. Okay. If I could direct you to the second
3 page of this document, Bates No. 417. You see it's
4 got a heading, "Critique," at the top?

5 A. Correct.

6 Q. I'll read it into the record. The first
7 sentence says, "Special order SL 5-21 requires all
8 commanders and supervisors assigned to this detail
9 to complete and submit MPD FORM OPP-43(10-07) major
10 event-after action critique."

11 Did I read that correctly?

12 A. Yes.

13 Q. Wonderful.

14 Are you familiar with what's described
15 here as a "major event-after action critique"?

16 A. Yes.

17 Q. Okay. I assume you're familiar also with
18 this requirement under the special order that all
19 commanders and supervisors assigned to this
20 particular operations plan would be required to
21 submit a major event-after action critique, correct?

22 A. Correct.

23 Q. And what's the reason why that's an
24 important requirement?

25 A. Well, it's so that we can improve these --

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1 these details. As -- as you -- as you can imagine,
2 because of all the types of details that go on
3 throughout the city, a -- a lot of times there's not
4 much critique at all because, you know, the number
5 of these details we do every year.

6 Q. But to the extent there's what I would
7 call "lessons learned after a major event," the
8 purpose, would you agree with me, of that major
9 event-after action critique is to improve and learn
10 from mistakes that may have happened?

11 A. Yes.

12 (WHEREIN, Exhibit 3 was marked for
13 identification by the court reporter.)

14 Q. I think you've been handed Exhibit 3; is
15 that correct?

16 A. Correct.

17 Q. Okay. I'll represent to you -- strike
18 that.

19 Do you see this is a major event-after
20 action critique that was submitted in connection
21 with the Stockley protest?

22 A. (Reviewed document.) I -- yes, sir, the
23 civil disobedience response from 9/15 through 9/24.

24 Q. Yeah. And if you go to the second page,
25 do you see that this one was submitted by Eric

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1 **Larson?**

2 A. Yes, I do.

3 Q. Okay. Does that concern you if I
4 represented to you -- strike that.

5 I'll represent to you that this major
6 event-after action critique submitted by Mr. Larson
7 is the only one that was submitted after the
8 Stockley protest, and my question to you, does it
9 concern you knowing that at the time you were the
10 interim chief of police that no other commanders or
11 supervisors who were assigned to the Stockley
12 protest complied with the special order and
13 submitted such a critique?

14 A. It doesn't surprise me because of all --
15 of everything that we were already discussing after
16 the events of the Stockley.

17 Q. When you say, "all the things we were
18 discussing afterwards," what are you referring to?

19 A. Well, besides a critique, there's --
20 when -- when we look at things, for actually almost
21 every major incident that may not even have a -- a
22 detail written for it, is we would look at a
23 critical incident review, and then take a look at
24 these and see if there's any lessons learned.

25 And -- and in -- in something like this,

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1 where we have officers who are injured,
2 particularly, it -- it may not be that simple as
3 "Hey, this is what you need to do."

4 In fact, a critique may be we need to sit
5 down and have a very long discussion and
6 after-action review of -- of this entire incident.

7 **Q. Was there such an after-action review**
8 **undertaken after the Stockley verdict that you**
9 **participated in?**

10 A. Well, we -- we spoke on a daily basis
11 of -- of things that were going on, planned events
12 and officers' response. So it was going on on -- on
13 a daily -- daily while we have all -- all the active
14 protests going on. Then, of course, we came through
15 that to even more with the litigation that was
16 involved that it would be even -- even more so.

17 **Q. Put aside litigation, sir, Mr. O'Toole.**
18 **What I'm trying to figure out is we know that**
19 **there's a requirement that's on page 2 of this**
20 **operations plan that you signed off on that requires**
21 **all commander supervisors to submit this form, as**
22 **you said, so we can improve how we do things --**

23 A. Right.

24 **Q. -- in the police department, and we know**
25 **that Mr. Larson's the only one who did it.**

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1 A. Right.

2 Q. And you're telling me it doesn't surprise
3 you that much because other things were done, and
4 I'm trying to understand with specifics what was
5 done.

6 Can you identify to me any communications
7 that you issued at the time you were interim chief
8 up until December 27th, 2017, which outlined here's
9 what I would call "lessons learned and ways we can
10 improve" that were communicated to all police
11 officers?

12 A. The -- what I would tell you is that this
13 particular incident -- I don't think you could
14 critique this particular incident, what happened
15 over this -- in a -- in a matter of a pay -- on a
16 page. So I think that when you take into --
17 everything that was taken into account in this
18 particular action, this -- this -- this detail, as
19 we refer to these things, and especially when we
20 have so many other agencies that were assisting us
21 as well, that it -- that it wouldn't be covered in
22 this type of a critique.

23 So I would tell you that the plan while I
24 was the interim was that we would have a complete
25 and total after-action report done, you know, once

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1 we had -- had the time to do so.

2 Q. Sir, I'm looking for just a simple
3 yes-or-no answer to a simple question, if I could.
4 That is are you aware of any documents created after
5 the Stockley protest while you were the interim
6 chief that, as you said, "provide a complete and
7 total after-action review of what transpired there"?

8 A. Can I qualify my answer more than a yes or
9 a no?

10 Q. Of course.

11 A. So my -- my answer is I am unaware of any
12 completed reports.

13 Q. During the time that you were the interim
14 chief, are you aware of anything, any draft reports
15 that people had started working on, as you said,
16 that would provide a complete and total after-action
17 review?

18 A. Reports, no. Again, that, "Hey, we would
19 be prepared to do this when -- when we had time to
20 sit down and the dust settled to do this," but there
21 were no -- so and I guess to answer your question
22 specifically, there were no written reports.

23 Q. Did you instruct anyone to begin that
24 process after the Stockley protest, i.e. to
25 document, investigate what transpired and put

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1 together some kind of a complete and total
2 after-action report?

3 A. Well, we document our actions in -- in
4 police reports if there's an arrest. So we document
5 it that way. We would then down sit down and -- and
6 discuss these things in -- in a meeting and then
7 prepare the documents if we needed.

8 So no, I have not seen any -- any drafts
9 or -- or any of that.

10 Q. I apologize. My question must be
11 inartful. Again, I'm going to ask the same question
12 because I don't think you heard me.

13 Did you, while you were interim chief,
14 request from anybody below you to begin preparing
15 some sort of report that would evaluate what
16 transpired in the Stockley protest and provide kind
17 of lessons learned?

18 A. The only thing that I said was that we
19 will do a complete and total after-action report
20 in -- in -- in the future.

21 Q. Did you instruct anyone to begin that
22 process?

23 A. No.

24 Q. Okay. Is there a reason why you didn't
25 instruct someone to begin that while you were

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1 interim chief after the Stockley protest?

2 A. There was still too much going on to --
3 to -- to say that we were ready to do it. This
4 was -- we were learning daily.

5 Q. Okay. You agree with me by now "the dust
6 has settled," as you used that phrase a few minutes
7 ago?

8 A. Yes, I -- I -- as regarding this -- the
9 protest. Yes.

10 Q. Okay.

11 A. The -- the -- the the dust has settled.

12 Q. To your knowledge, has the chief of
13 police, since December 28th, 2017, issued a request
14 whereby the police department is preparing a report
15 that evaluates and investigates what transpired in
16 the Stockley protest and lessons learned?

17 A. We -- the chief, I believe, has had two
18 different action reports given by Lieutenant
19 Jemerson of our squad team regarding protests and
20 activities of protests and -- and how they were
21 handled.

22 To say that they were specific to the
23 Stockley, I would say that they were not specific to
24 the Stockley case.

25 Q. Okay. To your knowledge, has the City to

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1 date prepared what you contemplated, and that is a
2 complete and total evaluation, after-action report
3 of the Stockley protest?

4 A. I have not seen one, no.

5 Q. Okay. Colonel O'Toole, you've been handed
6 what's been marked as Exhibit 4. Do you have that
7 in front of you?

8 (WHEREIN, Exhibit 4 was marked for
9 identification by the court reporter.)

10 A. I do.

11 Q. Do you recognize this as an email that you
12 sent out on November 16th, 2017?

13 A. (Reviewed document.) I do.

14 Q. And this was sent out to, am I correct,
15 all police officers within the St. Louis
16 Metropolitan Police Department?

17 A. Correct.

18 Q. And you attached -- do you recall the
19 preliminary injunction that was issued by the Court
20 in this matter?

21 A. I -- I -- I -- I attached it. I -- I'm
22 not going to be able to tell you verbatim everything
23 in there, but, yes.

24 Q. I would never ask you.

25 I'm just saying you see there's an

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1 attachment. It identifies an attachment, and then
2 you describe it as the Ahmad preliminary injunction;
3 do you see?

4 A. Correct.

5 Q. And you state here, and I'll quote you.

6 A. Uh-huh.

7 Q. It says, "It is important to familiarize
8 yourself with the order of preliminary injunction
9 issued by United States District Judge Catherine D.
10 Perry on November 15th, 2017. Should you have any
11 questions or concerns, please follow up with your
12 immediate supervisors."

13 Do you see that?

14 A. (Reviewed document.) I do.

15 Q. Okay. Other than this email that you
16 sent, any other communications to all police
17 officers with respect to the preliminary injunction
18 issued by the Court?

19 A. Not that -- not that I recall.

20 Q. Other than this email, did you or anybody
21 on your behalf send any emails to the police
22 officers explaining to them how the Court's
23 preliminary injunction order impacted their work on
24 a daily basis?

25 A. I -- I believe we had a -- a briefing from

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1 our -- our city counselor, Christine Hodzic --
2 Hodzic.

3 Q. Hodzic?

4 A. Hodzic, H-o-d-z-i-c.

5 I believe she gave a -- a briefing about
6 the ruling at our -- what we call our "senior
7 command," where, you know, those -- those commanders
8 who are responsible for the officers were in
9 attendance and -- and they were -- she briefed us on
10 that and we -- we were able to ask questions and so
11 forth.

12 Q. Okay. The meeting you described took
13 place just with senior command, correct?

14 A. Correct.

15 Q. How many people would you say qualify in
16 senior command that participated at that meeting?

17 A. All -- all captains and above. Maybe a
18 select number of lieutenants.

19 Q. Approximately how many would that be?

20 A. Oh. There's six district captains, a few
21 additional -- maybe ten, maybe a few additional
22 sergeants or lieutenants. Probably a few. So five.
23 The colonels. So there were probably, you know, 20
24 or 25 commanders.

25 Q. Okay. And how many police officers in the

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1 St. Louis Metropolitan Police Department in total?

2 A. In total?

3 Q. Yeah.

4 A. We have 1,200. I'll roughly say that.

5 Q. Okay. All right. And so my question is
6 focusing about those, the 1,200 --

7 A. Yes.

8 Q. -- the total number --

9 A. Sure.

10 Q. -- they were not present at the meeting
11 you just described, correct?

12 A. No.

13 Q. And what I'm trying to understand is other
14 than the email that you sent on November 16th, 2017,
15 are you aware of any communication sent to the 1,200
16 or so police officers providing them with more
17 specific kind of instructions and guidance how the
18 order may impact their day-to-day work in responding
19 to a protest, for example?

20 A. Well, when you send out an order like
21 this --

22 Q. Yeah.

23 A. -- to all personnel, okay, the expectation
24 is that those captains who are -- who control our
25 districts will -- and our lieutenants who are

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1 actually over the command of -- of the platoons,
2 when they go to roll call, the expectation is -- is
3 that they will talk about this at roll call and
4 bring this up. And, again, that's the time for the
5 officers to know about this.

6 And so that's what -- in an organization
7 where you delegate down to -- to -- to everyone to
8 be familiar with this, then that's what you're
9 expecting to be done. You know, at roll call is
10 where it's normally gone over.

11 Q. Okay. Just to make clear, though, other
12 than this one email that you sent to all police
13 officers, no other communication was sent to the
14 1,200 or so police officers providing them with any
15 guidance in writing with respect to the preliminary
16 injunction order issued by the Court. Is that a
17 fair statement?

18 A. I think that's a fair statement.

19 Q. Okay. And are you aware, sir -- strike
20 that.

21 Have you ever seen anything in writing
22 created by anyone at a commander or supervisor level
23 that provides guidance to police officers with
24 respect to the preliminary injunction order?

25 A. Can you rephrase that?

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1 Q. Sure. Have you yourself seen anything in
2 a written document whereby some instructions or
3 guidance is provided to police officers with respect
4 to the order issued by the Court?

5 A. No, I have not.

6 Q. Are you familiar with a Templeton
7 settlement from a few years ago?

8 A. I mean, in -- in general.

9 Q. And you're familiar that after the City
10 entered into the Templeton settlement, there was a
11 temporary directive issued by the City, Metropolitan
12 Police Department?

13 A. Yes.

14 Q. Is there a reason why a temporary
15 directive was not entered or issued following the
16 Court's order in this case?

17 A. Well, I -- I think --

18 MR. DIERKER: I'm going to object to
19 that question. I think that invades the
20 attorney-client work product privilege, and I'll
21 instruct him not to answer.

22 MR. PRAISS: Fair enough.

23 BY MR. PRAISS:

24 Q. Sir, in front of you, you should have both
25 Exhibit No. 1, which is the operations plan that you

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1 signed off on in connection with the Stockley
2 protests --

3 A. Yes.

4 Q. -- and we've established, I think, the
5 date on that should be September 14th, I believe,
6 correct?

7 A. 14th.

8 Q. And we also have Exhibit 4, which is an
9 email you sent to all police officers on
10 November 16th --

11 A. Yes.

12 Q. -- dealing with the order issued by the
13 Court.

14 Other than these two written documents,
15 are you aware of any other written communications
16 that you've had, including any particular emails,
17 that in any way addressed the Stockley protests?

18 A. I'm not aware of any other emails, no.

19 Q. Is it your testimony -- do you use a
20 computer regularly?

21 A. I do.

22 Q. Do you communicate with people using
23 email?

24 A. I do.

25 Q. Okay. Because it seems odd to me that

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1 considering you were their interim chief during a
2 critical time period where we had a major event --
3 I'm trying to understand, is it your recollection
4 you had no communications with anyone below you who
5 reported to you about the Stockley protests and
6 about how things were being handled, things of that
7 nature?

8 A. Is your question that I had no
9 communication with them or I had no written
10 communication with them?

11 Q. I consider -- email, I consider a
12 communication.

13 A. Right. Okay.

14 Q. And my question to you is do you recall
15 any email communications with anybody, subordinates,
16 while you were interim chief that dealt with the
17 Stockley protests other than the email shown in
18 Exhibit 4?

19 A. No, I'm not aware of -- of any emails, no.

20 Q. Okay. If you go back to Exhibit 1, the
21 operations plan, and on the second page, again, on
22 Bates No. 417 refers to Lieutenant Colonel Cardinal
23 Gerald Leyshock, who's going to serve as the
24 incident commander for any situation occurring
25 during the day watch? Do you see that?

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1 A. (Reviewed document.) Yes, I do.

2 Q. Okay. What's the difference between a day
3 watch versus an afternoon watch -- and I'm not even
4 sure if there is an evening watch -- just so I'm
5 clear?

6 A. Under the police department, we refer to
7 the day watch, and the day -- because of our shifts
8 and stuff, our day watch is typically 7:00 to 3:00.
9 Our afternoon watch is typically 3:00 to 11:00, and
10 our night watch would be 11:00 to 7:00.

11 Q. Okay. Do you recall who was the incident
12 commander at the time, let's say, of the kettle that
13 occurred on Sunday, September 17th?

14 A. Are you referring to the incident on
15 Washington Avenue and -- and Tucker?

16 Q. The mass arrest that occurred around 11:30
17 at night.

18 A. Okay.

19 Q. At night, yes.

20 A. Lieutenant Colonel Leyshock was there.

21 Q. Okay. Was he the incident commander at
22 that time?

23 A. I believe so, yes.

24 Q. Okay. What does it mean to be the
25 "incident commander"?

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1 A. He is -- he's in charge of the -- of the
2 whole operation. He'll make those decisions out
3 there on the street, and he'll -- he'll handle
4 everything that's happening.

5 **Q. Before Colonel Leyshock made decisions as**
6 **the incident commander, did he have to run them by**
7 **you on a regular basis?**

8 A. We would have communications, telephone
9 communications.

10 **Q. Right.**

11 A. He would keep me up to breast [sic], up to
12 -- up -- up to -- you know, what's going on and
13 that. He would not necessarily have to run any of
14 those decisions by me. That's why he's the incident
15 commander --

16 **Q. Okay.**

17 A. -- and -- that -- that's why he -- he's
18 there. But he keeps me, you know, up to date with
19 -- with the developments going on.

20 **Q. So while he keeps you abreast of what's**
21 **happening, the ultimate responsibility for handling**
22 **the situation is his as the incident commander. Is**
23 **that a fair statement?**

24 A. That's correct.

25 **Q. Okay. As incident commander, was, for**

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1 **example, Colonel Leyshock responsible for declaring**
2 **unlawful assembly or issuing dispersal orders?**

3 A. That -- that would be under his purview,
4 yes --

5 **Q. Okay.**

6 A. -- that he have people in that -- in those
7 positions to do that, yes.

8 **Q. Okay. At any time, did Colonel Leyshock**
9 **actually communicate with you and get your approval**
10 **before he issued, let's say, a dispersal order or**
11 **declared unlawful assembly, or did you just defer to**
12 **him to handle those situations based on the**
13 **circumstance he saw on the ground?**

14 A. I would defer to him for -- for those
15 because he's there, so I -- I can't make that
16 decision since I -- he's -- I'm not seeing what he's
17 seeing. So you -- you have to have confidence in
18 your commanders. That's how they get in -- in that
19 -- those positions to -- to handle that. So, yes.

20 **Q. Okay. If I could direct your attention to**
21 **page Bates No. City 422.**

22 A. Okay. 422, yes.

23 **Q. The very top of that page is a sentence**
24 **that states, "All commanders should be cognizant**
25 **that our ability to assist those persons who wish to**

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1 lawfully exercise their constitutional right could
2 be impinged by the criminal conduct of others."

3 You see that sentence?

4 A. (Reviewed document.) I do.

5 Q. Okay. Could you -- what do you understand
6 that sentence to mean?

7 A. We want -- our No. 1 responsibility is to
8 allow those people to exercise their constitutional
9 rights. All officers take an oath to uphold the
10 Constitution of the United States, but we know that
11 in protests -- not just in St. Louis but throughout
12 different areas of the country -- that there are
13 those people who have other motives, other intents
14 other than to peacefully exercise their -- their
15 constitutional rights. And we have to be aware of
16 that, and that's what we're trying to tell them in
17 this statement.

18 Q. Okay. And when it says here that the --
19 "Those persons who wish to lawfully exercise their
20 constitutional rights could be impinged by the
21 criminal conduct of others," could you give me an
22 example -- and specifically, let's say, with the
23 Stockley protests -- where you believe that took
24 place, where there was criminal conduct by some
25 people which impinged on the constitutional rights

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1 **of others?**

2 A. Well, I believe that we had officers who
3 were injured who were -- bricks -- were hit with
4 bricks, with other objects. We had windows that
5 were broken. So there was criminal conduct that --
6 that went on.

7 And, you know, that that -- in other
8 words, we don't want to reflect on everybody who's
9 protesting. So that's what we're -- we're -- we're
10 trying to -- to make officers aware of.

11 **Q. Okay. So in a situation where, let's say,**
12 **you have a few people who are acting in a violent**
13 **manner, would you agree with me that it's preferable**
14 **to simply try and arrest those individuals rather**
15 **then impinge on the constitutional rights of**
16 **everybody else who's acting peacefully?**

17 A. If -- if we can, yeah, absolutely. If we
18 can confine it to those individuals who are
19 violating the law, then -- then arrest those people
20 who are responsible for violating the law.

21 **Q. Okay. With respect to Exhibit 1, though,**
22 **the operational plan that we looked at, who was that**
23 **sent out to?**

24 A. This would be sent out to -- all the
25 commanders who were on this detail would receive

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1 this.

2 Q. Okay. At the very end of it, if you go
3 to, like, towards to -- I'll direct you to a
4 specific page, Bates No. 482.

5 Do you see there's a reference there to
6 different state offenses?

7 A. (Reviewed document.) Yes.

8 Q. And there's one for, like, unlawful
9 assembly, rioting, refusal to disperse on that page?

10 A. Correct.

11 Q. What is the reason for including the
12 different types of state offenses as part of this
13 document?

14 A. Well, it's not just this document but
15 other details. We would include what would be
16 the -- the -- the offenses that you would probably
17 come across in that detail.

18 As an example, like, Mardi Gras detail, we
19 would probably include in that detail urinating in
20 public, under underage drinking, etc. So these are
21 the type of offenses that the chances -- there's a
22 chance that the officers may encounter them.

23 Q. Okay. You've been on the police force for
24 many years, right, in one capacity or another?

25 A. Yes, I have.

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1 Q. Okay. During that time period, as best
2 that you can recall, what training do you recall was
3 provided with respect to things such as declaring an
4 unlawful assembly or -- let's just start with that
5 one?

6 A. You know, every officer goes through the
7 police academy and they receive, you know, the
8 training in -- in handling crowds, mobs, etc. So --
9 and -- and, of course, through the years, you've
10 seen different types of protests, activity that's --
11 that had changed and different rulings that have
12 come across and even changes in ordinances and --
13 and state law. So it's -- it's those type that
14 people are updated maybe during -- during additional
15 continuing education classes that they may bring it
16 up.

17 The popularity in the last several years,
18 particularly of -- of CDT -- what we refer to as
19 "civil disobedience teams" -- not just here in
20 St. Louis but throughout the country where they've
21 had all these different protests with, you know,
22 political conventions and -- and all these things
23 that hey, now they've taken that a step further and
24 they've -- they've done different training.

25 And then we have -- years ago, it was

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1 every officer on the department, you know, is -- is
2 -- was trained in how to handle a CD, civil
3 disobedience.

4 And now it's more that we have what we
5 call "teams," and those officers who are assigned to
6 those teams receive that additional training. So
7 you may have officers who are in the district who
8 haven't received any real additional training
9 because they're not on the civil disobedience team.
10 So those officers who are on the civil disobedience
11 team would -- would have training, would be issued
12 equipment and -- and so forth. And so it's -- it's
13 evolved.

14 So the answer to your question, from when
15 I first started, it has really involved -- evolved
16 through the years.

17 Q. Okay. And I appreciate that it's evolved
18 over many years. I want to try and get a little
19 more specific.

20 Do you agree, first of all, with the
21 proposition that training police officers is
22 critical for them to do their job correctly?

23 A. Absolutely.

24 Q. Okay. And that lack of training can
25 result in inappropriate behavior by police officers?

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1 A. Yes.

2 Q. Okay. You agree with me, for example,
3 that training police officers on the appropriate
4 circumstances when they can or cannot use chemical
5 agents is critical in order to ensure that they use
6 them appropriately?

7 A. All -- all their equipment, they need to
8 be trained on, yes.

9 Q. Okay. And, you know, I'm not talking
10 about how to use their equipment but when to use it.

11 Do you agree with me, sir, that it's
12 critical that police officers are trained about the
13 circumstance when they can or cannot use chemical
14 agents?

15 A. Yes.

16 Q. And do you agree with me that failure to
17 train police officers on when they can or cannot use
18 chemical agents can invariably lead to situations
19 where they're going to use it inappropriately?

20 A. There's that possibility.

21 Q. Okay. Do you agree with me that any
22 police officer has the discretion, assuming the
23 appropriate facts are there, to declare an unlawful
24 assembly, correct?

25 A. Well, you know, an unlawful assembly,

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1 normally, that -- that type of a decision would be
2 made more at a supervisory level.

3 Q. Right. But the reality is that,
4 currently, there is no -- there's no written rule
5 that the police department has that prohibits a
6 police officer at any rank from declaring an
7 unlawful assembly if he or she believes the relevant
8 facts are established?

9 A. Well, the -- actually, probably in our
10 rules would show that the officer would be -- would
11 be better to call his sergeant who's responsible for
12 that area, yes.

13 Q. Are you aware of any specific rules?
14 Because I've not seen any that deal with unlawful
15 assembly, who can declare it and under what
16 circumstances.

17 A. Well, specifically regarding that, no, but
18 just under the normal patrol type of duties that an
19 officer would contact his supervisor.

20 Q. Am I correct there's nothing written to
21 provide guidance to an officer with respect to when
22 to declare an unlawful assembly?

23 A. I -- I -- I don't -- I can't recall off
24 the top of my head, no.

25 Q. Okay. We've covered a couple topics,

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1 unlawful assembly, use of chemical agents, and we've
2 agreed that critical -- that the training is
3 critical to ensure that those things are done
4 correctly.

5 A. We've agreed that training is critical.

6 Q. Okay. Let me show you a few exhibits, if
7 I may.

8 (WHEREIN, Exhibit 5 was marked for
9 identification by the court reporter.)

10 Q. Okay. Mr. O'Toole, I'll hand a document
11 that's been marked as Exhibit 5, which is dated
12 around September 2014. It's -- indicates that it's
13 for the civil disobedience team and instructor is
14 Sergeant Randy Jemerson.

15 And have you ever seen this document
16 before today?

17 A. (Reviewed document.) No.

18 Q. Okay. Do you agree with me it's just a
19 two-page document that provides an outline of what
20 appears to be materials that Randy Jemerson uses for
21 a course that takes about 14 hours?

22 A. It's titled "Training Course Lesson Plan."

23 Q. Okay. But it -- and this just has a
24 specific learning objective; do you see that?

25 A. I see that.

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1 Q. Okay. But we don't have much detail
2 behind this document. It's only two pages with some
3 bullets, correct?

4 A. Yes.

5 Q. Okay. Have you ever seen any underlying
6 documents used by Sergeant Jemerson or anybody else
7 in training the civil disobedience team?

8 A. No, I have not seen any -- any of the
9 documents.

10 Q. Okay. O'Toole, you've been handed what's
11 been marked as Exhibit 6. Please take as much time
12 as you need just to flip through this exhibit.

13 (WHEREIN, Exhibit 6 was marked for
14 identification by the court reporter.)

15 Q. I'm just going to ask you a few very
16 high-level questions about this.

17 A. (Reviewed document.) Okay.

18 Q. Have you ever seen this document before?

19 A. I -- I believe this is a PowerPoint
20 presentation that was given by the city counselors,
21 or -- or Christine -- I think it was Christine
22 Hodzic.

23 Q. Okay. And were you present at this
24 presentation?

25 A. I believe so, yes.

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1 Q. Okay. Am I correct this presentation
2 wasn't provided to all 1,200 police officers?

3 A. No.

4 Q. Okay.

5 A. Not that I'm aware of.

6 Q. Okay. And you wouldn't consider this
7 document to be a -- training materials that were
8 disseminated to all police officers?

9 A. No. The -- the -- the presentation I was
10 at was all senior commanders --

11 Q. Okay.

12 A. -- and -- and those commanders with the
13 civil disobedience teams, yes.

14 Q. Are you aware to what extent the
15 commanders that were present at this meeting
16 generated written documents afterwards where they
17 explained certain information that's included here
18 like the 1,200 police officers?

19 A. Well, I'm not aware of anything that was
20 written, no.

21 Q. Okay. I'll give you another exhibit, if I
22 may.

23 Have you ever seen this document before?

24 (WHEREIN, Exhibit 7 was marked for
25 identification by the court reporter.)

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1 Q. Let me just begin. Have you ever seen
2 this document before?

3 A. (Reviewed document.) I believe I -- I --
4 I saw this that were given out to -- literature that
5 was given out to the protesters.

6 Q. Which -- are you suggesting the whole
7 document was given out to protestors or no?

8 A. No, no. I think just -- I think these --
9 just these general guidelines, I believe.

10 Q. When you say "general guidelines," what
11 are you referring to?

12 A. Just the first page.

13 Q. Okay. The first page has actually got the
14 ACLU --

15 A. Yes.

16 Q. -- on it?

17 A. Yes.

18 Q. So that's just the -- the first two pages
19 are "Know Your Rights, Demonstration and Protest
20 from the ACLU." Is that a fair statement?

21 A. Yes.

22 Q. Okay. What about the balance of it? Do
23 you recognize the balance of Exhibit 7, and if so,
24 could you identify it?

25 A. (Reviewed document.) And your question is

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1 again?

2 Q. Just do you recognize the balance of
3 Exhibit 7, not including the first two pages that we
4 just discussed?

5 A. Okay. (Reviewed document.)

6 MR. DIERKER: Off the record.

7 (WHEREIN, after an off-the-record
8 discussion, the proceedings resumed as follows, to
9 wit:)

10 A. Glancing through this, this looks like
11 this is a -- a -- a lesson plan as part of training
12 for civil disobedience that was prepared by Sergeant
13 Rossomanno and Sergeant Jefferson.

14 BY MR. PRAISS:

15 Q. And what leads you to conclude that this
16 was prepared by them for civil disobedience?

17 A. Well, looking at City 3623, which is
18 attached as a document, it says, "Lesson plan
19 developed and prepared by Sergeant Brian Rossomanno
20 and Sergeant Randy Jemerson."

21 Q. You're looking at 3623, correct?

22 A. 3623.

23 Q. Gotcha.

24 Do you know if that was prepared before or
25 after the Stockley protests?

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1 A. Well, if -- if these are the summaries
2 that are also attached, it talks about days one and
3 two of the detail, so it would have been prepared
4 afterwards.

5 Q. Okay. And with that in mind, sir, again,
6 you should have several exhibits in front of you
7 that we started with, what's marked as Exhibit 5,
8 which is a two-page document.

9 A. Yes.

10 Q. Other than this two-page document, sir,
11 are you aware of any written training materials
12 generated by anyone in the St. Louis Metropolitan
13 Police Department that, among other things,
14 addressed issues such as the use of chemical agents,
15 when it's appropriate or not, that were created
16 before the Stockley protests?

17 A. The use of chemical munitions -- is that
18 your question -- before Stockley?

19 Q. My question -- I'll just ask it again.

20 My question is other than this two-page
21 document, which has been marked as Exhibit 5, are
22 you aware of any written documents that you would
23 characterize as training materials that among other
24 things provide guidance to police officers regarding
25 when it's appropriate to use chemical agents that

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1 **were created prior to the Stockley protests?**

2 A. We have our -- our regular orders for
3 officers, and those are orders -- those -- about
4 that. So that's what I'm familiar with.

5 As far as training regarding chemical
6 munitions, that would have to be better answered
7 from the -- the training staff at the academy.

8 **Q. I appreciate that, but, again, I'm looking**
9 **at you today and I want to make sure I get your**
10 **understanding, especially since you were the interim**
11 **chief at a critical time period during the Stockley**
12 **protests.**

13 As of that time when you were the interim
14 chief, my question are you aware -- strike that.

15 Sitting here today, other than the fact
16 that the St. Louis Metropolitan Police Department
17 has special orders, correct --

18 A. Yes.

19 **Q. -- and just for the record, there's**
20 **special order, I believe, 1-01 Section IV that deals**
21 **with handheld pepper mace -- are you familiar with**
22 **that one?**

23 A. You know, I'm going to take your word for
24 it that that's the exact order, that it's codified
25 to that, but, yes, we have a special order that

1 addresses that.

2 Q. And there's a special order 1-01 Section
3 XIII that deals with the use of chemical agents with
4 respect to the dispersal of crowds.

5 Are you familiar with that one?

6 A. Yes.

7 Q. Okay. Separate and apart from the special
8 order, sir --

9 A. Right.

10 Q. -- my question again is other than this
11 two-page document, Exhibit 5, are you aware of any
12 training materials that were provided to all 1,200
13 officers at any time prior to the Stockley protests
14 that are in writing that among other things explain
15 when it's appropriate or not appropriate to use
16 chemical agents?

17 A. Training materials, no.

18 Q. Thank you.

19 Let's now look a little bit more in detail
20 about Exhibit 7. If you go -- you pointed me before
21 to Bates No. 3623, and this is the one that is
22 titled Civil Disobedience Team Training Lesson Plan;
23 do you recall?

24 I'll let you catch up.

25 A. (Reviewed document.) Yes.

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1 Q. And this was developed and prepared, as
2 you indicated, by Sergeant Brian Rossomanno and
3 Sergeant Randy Jemerson, correct?

4 A. Correct.

5 Q. And you've testified based on your review
6 that you believe that it was created after the
7 Stockley protest, correct?

8 A. Correct.

9 Q. Okay. If you look at the next page, it
10 talks again about the course that has a 16-hour
11 block of instruction for two consecutive days of
12 training; do you see that?

13 A. (Reviewed document.) I do.

14 Q. And in day 1, it talks about formation and
15 movements and shield/baton tactics; do you see that?

16 A. (Reviewed document.) I do.

17 Q. And then it lays in day two arrest teams,
18 react to fire, and large-scale moving situations; do
19 you see that?

20 A. (Reviewed document.) I do.

21 Q. And then what follows on Bates No. 3625 to
22 3627 is kind of an outline; do you see that?

23 A. (Reviewed document.) I do.

24 Q. Okay. Look at that outline, sir. Do you
25 see anything that in their two-day course in any way

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1 deals with when it's appropriate or not appropriate
2 to use chemical agents?

3 I just want to make sure I didn't miss
4 something.

5 A. (Reviewed document.) I don't see -- I
6 don't see anything codified in their objectives that
7 specifically deals with pepper spray.

8 Q. Okay. Am I correct, when you look at this
9 outline, you do not see any reference to chemical
10 agents or pepper spray or anything of the sort
11 referenced here, correct?

12 A. The only thing that I -- that I see is a
13 gas mask with carrying case. That's -- that's the
14 only -- only thing that makes any reference to that.

15 Q. Okay. Do you agree with me, sir, there's
16 no reference to a discussion during this -- strike
17 that.

18 Do you agree with me, sir, that as part of
19 this civil disobedience team training lesson plan,
20 there's no direct reference to chemical agents and
21 their use?

22 A. (Reviewed document.) In this lesson plan,
23 correct.

24 Q. Okay. And do you agree with me, sir, that
25 in this civil disobedience team training lesson

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1 **plan, there's no reference to declaring unlawful**
2 **assembly or issuing dispersal orders?**

3 A. (Reviewed document.) I see under "crowd
4 management and intervention," on page 3631,
5 strategies to -- you know, to escalate and
6 de-escalate, disperse unlawful crowds, arrest
7 individuals who fail to -- to disperse. I see that
8 listed there.

9 Q. Do you see anything about what I'm
10 focusing on? That's training about when it's
11 appropriate to issue a dispersal order, sir, in this
12 outline?

13 A. What's your question again?

14 Q. Yes. My question -- I had two components
15 to it so I'm going to break them into two.

16 Again, first of all, we've established
17 there's nothing in the outline that deals with
18 chemical agents, correct?

19 A. Actually, if you look at page 3632 --

20 Q. I'm catching up with you. Yeah.

21 A. -- at the bottom there, it says, "If
22 approved, deploy less lethal munitions to defend
23 officers or to -- to disperse a crowd."

24 Q. Okay.

25 A. That -- that's listed there.

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1 Q. Other than that, do you see any other
2 reference to when it's appropriate or not
3 appropriate to use --

4 A. I --

5 Q. -- let's say, handheld pepper spray in
6 dealing with protesters?

7 A. I -- for the first time going over this
8 document, I -- I haven't been able to see that.

9 Q. Okay. Do you see anywhere going through
10 this document any references to when it's
11 appropriate to declare an unlawful assembly?

12 A. (Reviewed document.) Just going through
13 here, I don't see anything listed in here about the
14 orders that you spoke about.

15 Q. Thank you. And when you say "orders,"
16 you're referring to unlawful assembly or issuing --

17 A. Dispersal orders is how -- I believe how
18 you --

19 Q. And on declaring unlawful assembly?

20 A. Right.

21 Q. Both of those?

22 A. Right.

23 Q. You don't see any reference to them?

24 A. I -- not through the glance that I've
25 taken.

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1 Q. Okay. Okay.

2 (WHEREIN, Exhibits 8 and 9 were marked for
3 identification by the court reporter.)

4 Q. You've been handed two exhibits. One
5 is -- Exhibit 8 and Exhibit 9.

6 Do you have both of them in front of you?

7 A. I do.

8 Q. Okay. Exhibit 8, do you recognize that as
9 Section IV of Special Order 1-01?

10 A. (Reviewed document.) I do.

11 Q. And it's the one that deals with use of
12 non-deadly force pepper mace?

13 A. Correct.

14 Q. And Exhibit 9, have you ever seen that
15 document before?

16 A. I have not.

17 Q. Okay. I'll represent to you it's a
18 declaration that was -- by Jerome Baumgartner that
19 was filed in this litigation by the City.

20 I want to focus you in particular on -- I
21 believe it's Exhibit C to it. Do you have Exhibit
22 C?

23 A. I do.

24 Q. And am I correct this is Section XIII of
25 Special Order 1-01?

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1 A. (Reviewed document.) Correct.

2 Q. And this one deals with the deployment of
3 chemical agents for crowd dispersal; do you see
4 that?

5 A. I see that.

6 Q. Okay. Do you agree with me that both of
7 these special orders were in effect at the time of
8 the Stockley protests?

9 A. Yes.

10 Q. And these are important sections of
11 Special Order 1-01 that specifically deal with the
12 use of -- broadly, I'd say "chemical agents,"
13 including handheld pepper spray, correct?

14 A. The one deals specifically with the -- the
15 pepper spray, and the other order deals with the
16 deployment of chemical agent for crowd disbursement.

17 Q. Have you ever seen any training materials?
18 And I've asked you indirectly, but I'm now asking
19 you by showing you these exhibits in front of you.

20 A. Right.

21 Q. Now that you have Exhibits 8 and 9 before
22 you, am I correct there's no other special orders
23 that deal with chemical agents that you're aware of?

24 A. (Reviewed document.) I -- I think these
25 would be the ones that probably cover it.

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1 Q. Have you ever seen any training materials
2 in writing that provide guidance to police officers
3 about when it's appropriate to use chemical agents
4 that in any way interpret and guide with respect to
5 Section IV and Section XIV of Special Order 1-01?

6 Let me ask it again.

7 A. Okay.

8 Q. Have you ever seen any training materials
9 in writing that address what is provided in Section
10 IV and Section XIII of Special Order 1-01?

11 A. (Reviewed document.) Have I seen training
12 materials regarding the use of pepper spray? Is
13 that your --

14 Q. No. My question is broader, sir.

15 Have you seen at any time training
16 materials that address the requirements set forth in
17 Section IV and Section XIII of Special Order 1-01?

18 A. I can't say that I've seen the specific
19 training materials. Everything's covered in -- in
20 this order, it appears, yes.

21 Q. My question: Have you ever seen any such
22 training materials?

23 A. I -- I -- I can't -- I don't recall.

24 Q. You're not -- sitting here today, am I
25 correct you're not aware of any such written

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1 training documents because you've never seen them?

2 A. Right.

3 Q. Is that an accurate statement?

4 A. I -- I -- I -- I think what I'm -- what
5 I'm trying to say is all officers have been trained
6 in pepper spray and the use of pepper spray, and
7 you're asking if I've seen actual documents about
8 this. And I -- what I'm trying to say is, you know,
9 I've had -- received -- received the training. If
10 there were actual documents, I -- I -- I don't
11 recall.

12 Q. Okay. And that's what I'm trying to
13 figure out is, very simply, if such documents exist
14 -- I wish we -- I'd like to know if you've seen
15 them. If you haven't seen them, just --

16 A. Yeah. I -- you know, I mean, all officers
17 are trained. It -- you know, it's -- it's -- it's
18 really -- I could give you written material on how
19 to ride a bike, but it's best if I just take you out
20 there, you know, and show you how to ride a bike.

21 Q. Is it your testimony that, similar to
22 riding a bike, it's not necessary to put the
23 training materials with respect to the use of
24 chemical agents as set forth in Section IV and
25 Section XIII of Special Order 1-01 in writing, that

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1 that's not necessary?

2 A. Well, I -- I -- I think we -- we have it
3 spelled out here, in writing here.

4 Q. Okay. And my question is, again, you've
5 said many times now and your answer is that you --
6 the officers are trained.

7 A. Uh-huh.

8 Q. And my question is are you aware of
9 anything in writing that's provided to the officers
10 that really explains when it's appropriate to use
11 chemical agents consistent with the requirements of
12 these two special orders?

13 A. My answer is -- is no. My -- what I've
14 seen in writing is -- is regarding the pepper spray
15 itself.

16 Q. And when you say, "the pepper spray
17 itself," you're referring to special -- the two
18 special orders that we're looking at?

19 A. No. I'm talk -- talking about, you know,
20 the -- the -- what the manufacturer would say about
21 distance and -- and so forth.

22 Q. Other than what the manufacturer says
23 about, you know, how to use their product, my
24 question is have you ever seen anything in writing
25 from the City that explains what the City believes

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1 are its policies with respect to the use of chemical
2 agents?

3 A. No.

4 Q. Thank you.

5 You're familiar with Section IV and
6 Section XIII of the special order, I assume?

7 A. Yes.

8 Q. Did you receive training on them?

9 A. Yes.

10 Q. When was the last time you received
11 training on them?

12 A. You know, it's -- we -- all officers are
13 required with our -- our use of force policies that
14 we do a monthly review of our -- of our training
15 with our use of force. So it's -- I've -- I've read
16 these at different times throughout my career, yes.

17 Q. Okay. And Section IV of Special Order
18 1-01 specifically deals with pepper mace, correct?

19 A. Correct.

20 Q. Do you understand that that's referring to
21 handheld pepper spray?

22 A. This order is (reviewed document) -- it
23 actually -- when you say, "handheld pepper spray,"
24 can you define what you consider "handheld pepper
25 spray"?

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1 Q. Absolutely.

2 My understanding is that all police
3 officers are provided handheld pepper spray.

4 A. Right.

5 Q. Okay. Separate and apart from that, am I
6 correct that the police department also has what's
7 called -- described as high-capacity extended range
8 OC spray that's issued to sergeants, correct?

9 A. Yeah, and that -- that's a handheld as
10 well.

11 Q. Okay. And let's -- when I say,
12 "handheld," I'm referring to the handheld small
13 device that's given to every police officer.

14 A. Okay.

15 Q. Okay?

16 A. All right.

17 Q. And I will distinguish that from the
18 high-capacity extended range OC spray. Okay?

19 A. Okay.

20 Q. Okay. Is it your understanding that
21 Section IV of Special Order 1-01 specifically deals
22 with what we've now agreed is handheld pepper spray?

23 A. Well, I -- but in the purpose under the
24 order, it says "To establish procedures relating to
25 the use of (1) Def-Tec Mark IV 'First Defense'

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1 pepper spray; and (2) any other pepper mace products
2 containing," you know, the OC approved by the
3 department. So both those devices are -- contain
4 that and are approved.

5 So that -- I'm not -- I'm just trying to
6 understand your question. Are you talking just
7 about the small -- smaller one or -- or -- or the --
8 the larger one?

9 Q. Okay. So is it your understanding having
10 -- based on your reading of the purpose set forth in
11 Section IV of Special Order 1-01 that both the
12 handheld pepper spray that all police officers are
13 provided as well as the high-capacity extended range
14 OC spray fall within the scope of Section IV of
15 Special Order 1-01?

16 A. Yes.

17 Q. Okay. Now, if we look at Section XIII of
18 Special Order 1-01, do you see the purpose here is
19 to outline a policy for the deployment of chemical
20 agents for crowd dispersal?

21 A. (Reviewed document.) I was giving the --
22 the order. What --

23 MR. PRAISS: Do you have a copy of it
24 that's been marked?

25 MR. DIERKER: I handed it to him

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1 because mine was open.

2 THE WITNESS: Yeah.

3 MR. PRAISS: Oh.

4 MR. DIERKER: Of the order, he's got
5 it out.

6 A. I'm sure --

7 BY MR. PRAISS:

8 Q. You have it?

9 A. I'm sure it's here somewhere.

10 Q. Okay.

11 A. So your question again.

12 Q. Okay. My question is -- are you looking
13 at Section XIII of Special Order 1-01 right now?

14 A. I have Section XIII, yes.

15 Q. Okay. And the purpose, it says, "is to
16 outline a policy for the deployment of chemical
17 agents for crowd dispersal."

18 Do you see that?

19 A. (Reviewed document.) Yes. Yes.

20 Q. And if you look under Section A, chemical
21 agent equipment, it has bullet 1 that identifies
22 different types of what appear to be chemical
23 agents; do you see that?

24 A. What page are you on?

25 Q. Same page.

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1 A. Same page. Okay. All right. I -- okay,
2 extended range of -- all right.

3 Q. Could you read for yourself Section 1
4 there that begins with "Mobile reserve/special
5 weapons"?

6 A. A, is that what you're referring to, "A:
7 chemical agent equipment"?

8 Q. Yes.

9 A. Number 1? Okay.

10 Q. I'm asking you just to read that.

11 A. Okay. All right.

12 Q. Take your time.

13 A. (Reviewed document.) I've -- I've read A,
14 chemical agent equipment, No. 1, yes.

15 Q. Okay. Not having had the opportunity to
16 read the pertinent parts of Section XIII of Special
17 Order 1-01, I -- my question to you is -- strike
18 that.

19 Is it your understanding that Section XIII
20 of Special Order 1-01 covers both the use of
21 handheld pepper spray as well as the high-capacity
22 extended range OC spray?

23 A. (Reviewed document.) I -- I -- I believe
24 so, yes.

25 Q. Okay. So you believe both of them fall

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1 within the scope of Section XIII of Special Order
2 1-01?

3 A. It -- it -- it seems that they're talking
4 more the extended range here in No. 2, high-capacity
5 extended range, but, yes.

6 Q. Okay. Do you recall ever receiving
7 specific training about the kind of issue I'm asking
8 you, and that is what type of chemical agents fall
9 within the scope of the different special order
10 sections we're looking at?

11 A. I -- I don't understand your question.

12 Q. Okay. My question is do you recall at any
13 time receiving training with respect to what
14 chemical agents fit within the scope of Section IV
15 of Special Order 1-01 versus Section XIII of Special
16 Order 1-01?

17 A. Well, we're -- we're only issued one --
18 one type of -- of OC spray.

19 Q. Well, you told me -- you told me that you
20 believe both the handheld pepper spray as well as
21 the high-capacity extended range OC spray fit within
22 the scope of both of these sections, correct?

23 A. Yes. Yes.

24 Q. And for example, sergeants have authority
25 to use high-capacity extended range OC spray,

1 correct?

2 A. Correct.

3 Q. Okay. My question is are you aware of any
4 training that sergeants are provided -- strike that.

5 Are you aware of any training that police
6 officers receive when they -- with respect to your
7 interpretation that handheld pepper spray fits
8 within the scope of Section XIII of Special Order
9 1-01?

10 A. The -- the type of training that officers
11 receive is -- they would be -- have the opportunity
12 to use an inert pepper spray to -- to show the
13 distance and the -- and the different -- you know,
14 how a stream versus the -- the larger fogger, how
15 they work. So that would be the training.

16 Q. Okay. And I understand there's training
17 about how to use the product.

18 A. Okay.

19 Q. You spray and you watch the distance it
20 goes.

21 A. Right, right.

22 Q. My question is different.

23 Are you aware of training that the police
24 department provides all police officers who are
25 issued handheld pepper spray explaining to them that

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1 the use of handheld pepper spray falls within the
2 scope of Section XIII of Special Order 1-01?

3 A. You know, the only training is -- is --
4 that they would receive during their -- their --
5 their -- their pepper spray training to go over how
6 you would use it and when to use it in any -- in any
7 situation, so, yes.

8 Q. Do you know, for a fact, sitting here
9 today, sir, whether there's training that explains
10 to the police officers that they are allowed to use
11 handheld pepper spray in -- for purposes of crowd
12 dispersal pursuant to Section XIII of Section Order
13 1-01?

14 A. Sergeants or above can use the -- the
15 larger, yeah.

16 Q. I'm not talking about the larger one, sir.

17 A. Oh.

18 Q. I'm talking about the handheld spray.

19 A. Oh, the handheld.

20 Q. Yes. Let's go back. I'm sorry to belabor
21 the point.

22 A. Oh. Right.

23 Q. You testified that you understand that
24 handheld pepper spray --

25 A. Uh-huh.

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1 Q. -- falls within the scope of Section XIII
2 of Special Order 1-01, correct?

3 A. Yeah. I mean to outline a policy for the
4 deployment of chemical agents for crowd control;
5 that's the purpose.

6 Q. I understand that's the purpose.

7 A. Yes.

8 Q. I can read that as well.

9 A. Right.

10 Q. No disrespect.

11 A. No, no. I understand. I -- I want to
12 answer your question.

13 Q. I know.

14 A. I -- I just -- I'm trying to get to what
15 you're -- you're --

16 Q. Let me start over again, sir.

17 Correct me if I'm wrong, but you've
18 testified that your understanding is that handheld
19 pepper spray falls within the scope of Section XIII
20 of Special Order 1-01, correct?

21 A. Yes, they talk about chemical agents, yes.

22 Q. Yes. But, specifically, you believe
23 handheld pepper spray falls within the scope of this
24 provision, correct?

25 A. Yes.

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1 Q. Okay. And we've established that all
2 1,200 police officers or thereabout received
3 handheld pepper spray as part of their equipment,
4 correct?

5 A. Correct.

6 Q. And my question is very specific: Are you
7 aware of any training provided to the police
8 officers that explains to them that the handheld
9 pepper spray that they've been issued can be used
10 for crowd dispersal pursuant to Section XIII of
11 Special Order 1-01?

12 A. No, I'm not aware of any training that
13 they would use the handheld ones for crowd
14 disbursement.

15 Q. Okay. What is the Real Time Crime Center?

16 A. Real Time Crime Center is -- is a unit
17 within the police department that analyzes, reviews,
18 investigates all the different types of video
19 footage from cameras throughout the city that are
20 cameras that belong to the -- to the police
21 department, that belong to the City. Some cameras
22 belong to the State. Some of the cameras that --
23 that come in are owned by private entities.

24 And so all those cameras feed in to the
25 Real Time Crime Center. I believe there's about 700

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1 cameras at this point, and the -- those officers who
2 are assigned there to the Real Time Crime Center
3 monitor those cameras. It's -- a number of these
4 cameras also have LPR capabilities, license plate
5 recognition capability, and so they would also
6 monitor the alerts from the LPR system. If there's
7 any type of a crime that goes on involving a vehicle
8 or suspect, maybe in an area where there is a
9 camera, they would direct their attention to that
10 area to see if there's a camera that would possibly
11 capture that, and -- and -- and so they do a lot of
12 our -- our technology-related things.

13 Q. Okay. Am I correct you were at the Real
14 Time Crime Center on the weekend of the Stockley
15 protests, September 15th, 16th, and 17th?

16 A. Yes, I was.

17 Q. Okay. Do you recall who else was with you
18 there?

19 A. There was a lot of people there.

20 Q. Was Governor Eric Greitens there with you?

21 A. He wasn't there at all time. I think he
22 -- he just stopped in to visit, right.

23 Q. What role, if any, did he play --

24 A. He --

25 Q. -- at the Real Time Crime Center?

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1 A. He played no -- no role, other than as an
2 observer. We had a -- a number of -- of people who
3 stopped in to observe what was going on.

4 **Q. Did you have any conversations with the**
5 **governor at any time about the events?**

6 A. Actually, you got to greet the governor
7 when he comes in, so I greeted him. He had no
8 operational role, but -- but he -- his people from
9 the State, you know, were there and they were
10 assisting the police department and the City.

11 **Q. Okay. Was the mayor present?**

12 A. Yes.

13 **Q. What role did she play at the Real Time**
14 **Crime Center?**

15 A. She was an observer. I mean, we would
16 take time to explain events that were going on,
17 particularly those events that affected her
18 property, so but she was there as -- as an observer.

19 **Q. Okay. How about Lieutenant Colonel**
20 **Leyshock? Was he there?**

21 A. No.

22 **Q. He was on the ground?**

23 A. He was on the street, yes.

24 **Q. Gotcha.**

25 **How about Lieutenant Tim Sachs?**

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1 A. No.

2 Q. He was on the streets?

3 A. On the street.

4 Q. How about Captain Michael Deebea?

5 A. Deebea was on the street and in the Real
6 Time Crime Center both.

7 Q. Okay. Were you actually giving orders
8 from the Real Time Crime Center to Lieutenant
9 Colonel Leyshock?

10 A. I wasn't so much giving him orders. I
11 was -- he was giving me the briefing on the
12 situation.

13 Again, as I spoke earlier, that he's the
14 incident commander. He sees everything that's
15 there. I'm actually there because I have all the
16 resources with me. So if he's in a place or if I
17 can see monitoring the cameras, he's going to be in
18 need of some additional resources, maybe the fire
19 department or --or EMS or additional people who
20 are -- who are in a -- manpower that may be a stage
21 at an area that I can move manpower toward him to
22 facilitate any -- any of those things.

23 If he says, "Hey, I'm really shorthanded,
24 I need another squad," I can take a look and I can
25 see that and I can do that where -- where he can

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1 stay focused on -- on handling his job there.

2 Q. Okay. So your role more was proving
3 support based on the additional resources you had
4 available at the Real Time Crime Center, but
5 ultimately the -- in terms of making a determination
6 and issuing orders, that was the responsibility of
7 Lieutenant Colonel Leyshock?

8 A. Lieutenant Colonel Leyshock would, at
9 least, in a -- "Hey, you know, we got this and we
10 got a crowd and we are going to end up making
11 arrests," that type of a conversation.

12 And then, "Okay, fine. Have we taken the
13 proper steps, what -- do you need any more resources
14 in order to do this," etc.

15 Q. But at no time did you give Lieutenant
16 Colonel Leyshock orders about how to respond to the
17 protest. Is that a fair statement?

18 A. No, that's his job. Yes.

19 Q. Okay. Do you know who mans the
20 building-mounted cameras at the Real Time Crime
21 Center?

22 A. I -- you have to be a little more --

23 Q. Yeah?

24 A. I don't understand your question.

25 Q. Sure. It's not the best.

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1 But I've seen videos where it's clear
2 somebody is zooming in and zooming out at different
3 events, and so I'm trying to understand, who does
4 that?

5 A. They're -- they're -- the Real Time Crime
6 Center has capability to do some zooming on cameras.
7 But because there's a lot of cameras that are fed in
8 there whether or not they have the ability to zoom
9 in on all the cameras, that's -- that's a question I
10 -- I don't have the technical expertise.

11 Q. But to the extent they have it, who's the
12 people that are doing that? Do you know?

13 A. Those -- those are the officers who are
14 assigned to the Real Time Crime Center.

15 Q. Okay.

16 A. Police officers, detectives.

17 Q. So police officers are the ones who are
18 manning that and making determination to zoom in or
19 zoom out?

20 A. Yes. Yes.

21 Q. Okay.

22 A. Or they -- or they -- if they have a
23 particular -- you know, if we're looking at
24 something on -- on one of the screens and we see
25 that, we can ask them, "Can you zoom in on that?"

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1 Q. Okay. Am I correct that shortly before
2 the Stockley protests, you went to the St. Louis
3 Police Officers Association meeting?

4 A. I've been to the Police Officer
5 Association meeting before, yes.

6 Q. Okay. Okay. Do you recall going to that
7 meeting and throwing guns on the table?

8 A. No. What -- what -- what -- what guns
9 would I throw on the table?

10 Q. I'm just asking if you recall --

11 A. No.

12 Q. -- throwing guns on the tables?

13 A. I don't throw guns on -- on tables.

14 Q. Okay. Okay. Do you recall that early in
15 the morning of September 18th, 2017, you held a
16 press conference?

17 A. Okay. Yes.

18 Q. Okay. Do you recall that during that
19 press conference, you stated that you were proud
20 that, and I quote, "the police owned the night" the
21 previous day?

22 A. Yeah.

23 Q. Okay. When you said "the police owned the
24 night," what did you mean by that?

25 A. Well, the -- the context in which I -- I

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1 said that -- and I was actually criticized by some
2 people -- it certainly wasn't meant to -- to insult
3 anybody.

4 But, you know, throughout this event, you
5 know, this isn't just -- you know, we had a number
6 of protests going on. We had a number of officers.
7 We have property damage that's going on in the
8 Central West End and property damage that is going
9 on downtown.

10 So it was just meant to say, "Hey, you
11 know what? We took control of -- of this. We
12 didn't allow -- you know, when the property damage
13 started, we moved in and -- and -- and -- and -- and
14 tried to -- to take control of the situation to
15 minimize the type of damage that was done."

16 So it was -- it was meant in that context.

17 **Q. Okay. But you did use the phrase, "the**
18 **police owned the night," correct?**

19 **A. I did.**

20 **Q. Okay. And that was just a day after the**
21 **police had chanted "Whose streets? Our streets."**
22 **Isn't that correct?**

23 **A. I don't know the -- the timeframe there,**
24 **but some of officers chanted that, yes.**

25 **Q. Were you involved in that chant?**

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1 A. No, I was not involved in that.

2 Q. Okay. Okay. Am I correct you don't
3 believe it was appropriate for the officers to -- it
4 was at least, at a minimum, unprofessional to chant
5 "Whose streets? Our street"?

6 A. It's -- absolutely.

7 Q. Okay. Did you address with the commanders
8 who were responsible for the chant "Whose streets?
9 Our Streets" at any time?

10 A. I did.

11 Q. And what commanders did you address that
12 with?

13 A. Lieutenant Colonel Leyshock.

14 Q. Okay. Was he the one responsible for that
15 chant?

16 A. He was the incident commander. All those
17 officers were under his control.

18 I -- I -- Lieutenant Colonel Leyshock was
19 not responsible for it, but I can assure you he knew
20 quite well that I was not happy with that type of
21 behavior.

22 Q. You indicated in an interview at one point
23 that those commanders had already taken corrective
24 action; do you recall that?

25 A. Yes.

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1 Q. Okay. Am I correct now, though, that no
2 police officers were ever disciplined for chanting
3 "Whose streets? Our Streets"?

4 A. I -- I'd -- I'd -- I'd left that
5 determination up to Colonel Leyshock to -- to -- to
6 look at that and see if there was sufficient to --
7 to do a -- what we call an employee misconduct
8 report or if he wanted to handle it at -- at a, you
9 know, a -- another -- at a lower level.

10 Q. To your knowledge, did Lieutenant Colonel
11 Leyshock ever reprimand anybody involved in the
12 chant "Whose streets? Our streets"?

13 A. Just so we're both talking the same
14 language, Lieutenant Colonel Leyshock did not
15 prepare an employee misconduct report, that I'm
16 aware of.

17 Q. Okay.

18 (WHEREIN, after an off-the-record
19 discussion, the proceedings resumed as follows, to
20 wit:)

21 Q. At that press conference, you also
22 indicated that a group of criminals had set out to
23 break windows and destroy property on the evening of
24 September 17th, 2017. Do you recall that?

25 A. Yes.

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1 Q. Okay. And then you said, and I quote,
2 "Tonight those criminals are in jail." Do you
3 recall that?

4 A. Yes.

5 Q. Okay. And then you said -- the next thing
6 you said was "Tonight we made more than 80 arrests."
7 Do you recall that?

8 A. Yes.

9 Q. Okay. Is it fair to say that the majority
10 of the arrests that were made on September 17th were
11 not for vandalism or property damage but rather
12 failure to disperse?

13 A. Yes.

14 Q. Okay. Did you ever let the audience know
15 that there was the reason people were arrested?

16 A. I don't -- I -- I -- I don't recall
17 whether -- the specifics, if I said, "Hey, this is
18 what everybody was arrested for."

19 Q. Okay.

20 A. However, that would be public information
21 the next day, you know.

22 Q. Well, the reason I said, because when I
23 listened to that -- your comments, it made it appear
24 like the 80 arrests were all for vandals and
25 property damage when the reality is very few were

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1 for that. The majority were just failure to
2 disperse, correct?

3 A. The majority of them were for, yes.

4 Q. Okay. You also stated that "We
5 confiscated at least five weapons," correct?

6 A. That's what I said, yes.

7 Q. Isn't it true that many citizens in
8 Missouri lawfully can carry weapons?

9 A. That is true, yes.

10 Q. Okay. And, in fact, the weapons that you
11 confiscated were being lawfully carried at the time?

12 A. I don't recall the specific of the weapons
13 and the reasons.

14 Q. Okay. Okay. Okay. Are you aware of
15 anybody that was -- with respect to the five weapons
16 that were confiscated, are you aware of any
17 specifics that that individual did not have a right
18 to carry at the time?

19 A. I don't recall any of that information.

20 Q. Okay. Am I correct one of them was, in
21 fact, lawfully carried by an active-duty member of
22 the military? Do you recall that?

23 A. No.

24 Q. Okay. Do you recall on September 28th,
25 2017, you had an interview with Art Holliday of

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1 KSDK?

2 A. I -- I had a number of interviews.

3 Q. Okay.

4 A. Okay.

5 Q. Do you recall in that interview
6 Mr. Holliday asked you about "kettling." Do you
7 recall that?

8 A. No. No.

9 Q. No.

10 And you -- do you recall telling him that
11 "That's not a practice that we have"?

12 A. We don't.

13 Q. Okay. As far as you know, is that the
14 only time the St. Louis Police Department has used
15 what's been described as "kettle" in this case,
16 situation?

17 A. We have never -- I had to look up the
18 term.

19 Q. Okay.

20 A. To give you an idea how much -- and I've
21 been on for a few years. Never heard that term
22 before.

23 Q. Okay. Am I correct that Lieutenant
24 Colonel Leyshock was the one who came up with that
25 idea?

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1 A. I don't know that that's true or not.

2 Q. Okay. Did you instruct him or anybody on
3 the ground -- strike that.

4 On September 17th, 2017, when you were at
5 the Real Time Crime Center, did you have
6 communication with Lieutenant Colonel Leyshock about
7 his use of what's been described as a "kettle" to
8 bring officers from four different directions and
9 corner people in the middle?

10 A. I didn't direct Lieutenant Colonel
11 Leyshock on the ground. I -- I'm not in a position
12 to tell him tactics to use --

13 Q. Okay.

14 A. -- so, no.

15 Q. Well, am I correct that Lieutenant Colonel
16 Leyshock would have been the one, then, who would
17 have come up with the idea or the one that approved
18 of the idea at a minimum?

19 A. At -- at a minimum, those -- all those
20 officers at that detail are under -- under his
21 command, and he has other commanders who were there.
22 And so his commanders would be in charge of -- of --
23 of that situation and dealing with it.

24 But -- but I -- I do not know, nor do I
25 believe, that anyone would have given any type of

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1 an -- of an order like that to -- to as you -- you
2 used the term. I don't use the term "kettle," but
3 what's been described as that.

4 Q. Putting aside the use of the word "kettle"
5 --

6 A. Right.

7 Q. -- my point is am I correct that on the
8 ground, Lieutenant Colonel Leyshock, as the incident
9 commander, was the one who approved the use of
10 bringing officers from four different directions to
11 basically trap the people in the middle?

12 A. Colonel Leyshock, as the incident
13 commander, he's in charge of -- of that entire
14 incident and he would oversee that entire incident,
15 yes.

16 Q. Subsequent to September 17th, 2017, have
17 you had any conversations with Lieutenant Colonel
18 Leyshock about the propriety of that approach, of
19 how he handled it?

20 A. It -- I -- I -- I guess I don't understand
21 your question. What -- what do you mean?

22 Q. Well, after September 17th, 2017, have you
23 had any conversations, meetings with Lieutenant
24 Colonel Leyshock where you expressed any concerns
25 about the approach that he came up with to deal with

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1 the protesters that evening at 11:30 at night?

2 A. We've had conversations a -- about the
3 incident and what went on and how we handled it, and
4 we've had those conversations.

5 Q. Do you think the incident -- the approach
6 taken by Lieutenant Colonel Leyshock was
7 appropriate?

8 A. I think that the totality of all -- of
9 everything that happened down there in -- in -- in
10 trying to minimize the -- the damage to property and
11 injuries to officers and civilians that I -- I -- I
12 think he handled it, yes.

13 Q. Do you think he handled it well?

14 A. I think under the circumstances, yeah.
15 Hindsight 20/20 --

16 Q. Well, I --

17 A. -- but I think given what he's given
18 and -- and -- and the facts that he's faced with
19 there, he has to make a decision and he made a
20 decision.

21 Q. Okay. Do you recall in the conversation,
22 the interview you had with Art Holliday, you said
23 that all the information about kettling would come
24 out during investigation; do you recall that?

25 A. Yes.

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1 Q. Okay. Again, are you aware of any
2 investigation into the kettle that's been conducted
3 at any time since September 17th, 2017?

4 A. The only -- the -- the incident -- the
5 report that was prepared.

6 Q. Okay. And when you say "incident report,"
7 which report are you referring to?

8 A. The -- of -- of that particular incident
9 --

10 Q. Okay.

11 A. -- of going on there.

12 Q. Other than that document, are you aware of
13 any other steps taken by the St. Louis Metropolitan
14 Police Department to really evaluate and study how
15 the police department responded to the protestors on
16 the night of September 17th, 2017?

17 A. Well, I -- I will tell you that that
18 particular night, there was another incident that --
19 involving one of our officers who was assaulted, and
20 that has since gone to a, you know, federal
21 investigation. And I testified at a federal grand
22 jury and so I'm -- I can't speak of that. So I can
23 tell you that that has happened.

24 Q. Right. And I understand you're referring
25 to the incident involving Luther Hall, correct?

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1 A. Correct.

2 Q. Okay. Separate and apart from any
3 investigation undertaken by the US Attorney's Office
4 into the Luther Hall incident, are you aware of any
5 specific steps taken by the St. Louis Metropolitan
6 Department to investigate the circumstances relating
7 to the kettle and how it was handled and how it
8 could be -- could have been handled differently and
9 better?

10 A. Well, I -- I think that's why we're
11 sitting here, is to learn lessons learned on this.
12 And so I think that this is ongoing and that we're
13 going to probably learn even more out of this.

14 Q. Separate and apart from the fact that
15 we're sitting here in, unfortunately, a litigation
16 -- which is not necessarily the best way to get
17 lessons learned always -- my question still is the
18 one I would like an answer.

19 Other than ongoing litigation, are you
20 aware of any specific steps taken by the St. Louis
21 Metropolitan Police Department to investigate and
22 study what transpired on the evening of September
23 17th, 2017, in terms of lessons learned and how
24 things could be done differently and better?

25 A. I'm not aware of any -- anything as far as

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1 that has been published as far as lessons learned,
2 though.

3 Q. So you add the word "published," and that
4 forces me to ask you another question.

5 So are you aware of any drafts of any
6 sort? Make it broader, sir. Strike that.

7 Are you aware of any internal
8 communications since September 17th, 2017, where
9 people within the St. Louis Metropolitan Police
10 Department are evaluating and investigating lessons
11 learned from the Stockley protests?

12 A. Now, you made your question pretty broad.
13 So you said "any communication at all."

14 So I would tell you that there has been no
15 official investigation that I am aware of. Bear
16 that in mind, that there are investigations in the
17 internal affairs division that go on that -- that we
18 may not be privy to.

19 Q. Okay. But sitting here today, you're not
20 aware of any investigations that have been conducted
21 by the St. Louis Metropolitan Police Department with
22 respect to lessons learned from the Stockley
23 protests?

24 A. I'm not aware of any, no.

25 Q. Okay. Thank you.

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1 You had mentioned the Luther Hall incident
2 sir, do you recall, a few minutes ago?

3 A. I did.

4 Q. Okay. To your knowledge, did the
5 St. Louis Metropolitan Police Department investigate
6 the actions of Joseph Marcantano in connection with
7 the Luther Hall incident?

8 A. I -- I -- I'm not -- I'm -- I'm not sure.
9 I don't know. You gave me a name, and -- and I'm
10 not certain.

11 Q. For the record, his -- the spelling is
12 M-a-r-c-a-t-n-a-o [sic].

13 A. Okay.

14 Q. Do you know Joseph Marcantano?

15 A. I -- I -- I have heard the name, but I
16 don't -- I -- I -- I'm not so sure I'd know him if
17 he walked in this room.

18 Q. That's fine.

19 But, again -- so sitting here today,
20 you're not aware of any investigation by the
21 St. Louis Metropolitan Police Department
22 investigating Mr. Marcantano's actions in connection
23 with the Luther Hall incident. Is that a fair
24 statement?

25 A. I -- that's a fair statement in that I --

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1 I'm -- I'm not familiar with everybody who's
2 involved in -- in that investigation.

3 Q. Okay.

4 A. He could be one.

5 Q. But you don't have knowledge?

6 A. I don't have that knowledge.

7 Q. That's all I'm asking.

8 Am I correct that you asked the police
9 unit leaders to chip in money to replace the camera
10 Luther Hall had been carrying which was destroyed
11 during the incident?

12 A. No.

13 Q. You don't recall doing that?

14 A. I didn't do that.

15 Q. Okay. I apologize. I think I asked that
16 question poorly.

17 Are you aware of anybody asking a --
18 police union leaders to chip in money to replace the
19 camera that Luther Hall had been carrying that
20 evening?

21 A. No.

22 Q. Okay. To your knowledge, did the
23 St. Louis Metropolitan Police Department
24 investigator investigate the officer assault on the
25 homeless man who was arrested along with Mr. Hall?

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1 A. I have no knowledge of that.

2 Q. Okay.

3 MR. PRAISS: I have no further
4 questions. Thank you very much, yeah, for your
5 time.

6 THE WITNESS: Thank you.

7 MR. DIERKER: I have no questions.

8 Colonel, you have the right to review
9 the deposition and to make any corrections that you
10 think would be appropriate, or you can rely on the
11 accuracy of the court reporter and waive signature.
12 We would recommend that you just go ahead and waive
13 signature. That's up to you.

14 THE WITNESS: I'll go with your
15 recommendation.

16 MR. DIERKER: All right. Fair
17 enough.

18 THE WITNESS: But could I have a copy
19 of it too?

20 MR. DIERKER: Oh, we will be happy
21 to.

22 THE WITNESS: Yeah. Okay.

23 (WHEREIN, the proceedings were thereby
24 concluded at 11:51 a.m.)

25 * * * * *

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CERTIFICATE OF REPORTER

I, Susan J. Pybas, CCR, No. 1446(T) within the State of Missouri, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken, and further, that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

Susan J. Pybas, CCR

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